THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.4916 OF 1997

DATED: 20-2-2007

Between :

1. Patnayakni Manikyamma (died)
2. P. Hariramana Rao
3. P. Ramesh
4. Smt. S. Venukumari

(RR-2 to RR-4 are added as LRs of R1 as per Court order dated 2-2-2007 in WPMP.No.2097/2007) ... Petitioners

And

1. The Commissioner of Survey, Settlements And Land Records, Nampally Station Road, Hyderabad and 3 others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.4916 OF 1997

ORDER :

The 1st petitioner, Smt. Patnayakuni Manikyamma, since died, represented by her legal representatives – petitioners 2 to 4 herein was granted a ryotwari patta under Section 9 of the Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation 1970 (for short, 'Regulation 2 of 1970') in respect of Ac.33-45 cents of land situated in G.L. Puram Village which is a scheduled area, vide proceedings of the Deputy Collector (Tribal Welfare) and Settlement Officer, dated 22-

5-1975. Challenging the same, the Mandal Revenue Officer, Gummalakshmipuram preferred an Appeal before the Director of Settlements, A.P., Hyderabad. However there was a delay of 10 years 178 days in preferring the Appeal and the Director of Settlements, A.P., Hyderabad, after hearing both the parties, by order dated 19-7-1986 while declining to condone the delay, rejected the Appeal as time-barred. Against the said order, the Mandal Revenue Officer – the 4th respondent herein - preferred a further Appeal under sub-section (3) of Section 9 of Regulation 2 of 1970 before the Commissioner of Survey, Settlements & Land Records, A.P., Hyderabad (the 1st respondent herein) with a delay of about 6 years. The 1st respondent by order dated 5-12-1996 condoned the delay of 6 years and also allowed the appeal thereby setting aside the order passed by the Director of Settlements, dated 19-7-1986 with a direction to hear the matter on merits,. The said order passed by the 1st respondent dated 5-12-1996 is under challenge in this writ petition.

I have heard the learned Counsel for both the parties and perused the material on record.

It is to be noted that under sub-section (3) of Section 9 of Regulation 2 of 1970 an Appeal lies to the Director of Settlements or the Commissioner of Survey, Settlements & Land Records within 60 days from the date of communication of the order appealed against.

Rule 10 of A.P. Scheduled Areas Ryotwari Settlement Rules, 1971, made in exercise of the rule making power conferred under Section 16 of Regulation 2 of 1970, provides that the provisions of the Limitation Act, 1963 shall apply to all the proceedings under the Regulation 2 of 1970 before the Authorities and the Officers having jurisdiction under the Regulation to the extent they are not repugnant to the specified provisions of the Regulation.

On a combined reading of the above provisions, it is clear that Section 5 of the Limitation Act is applicable to the proceedings before

the appellate authority under sub-section (3) of Section 9 of Regulation 2 of 1970 and any appeal preferred after the prescribed period of 60 days can be admitted only if the appellant satisfies the authority that he had sufficient cause for not preferring the appeal within the prescribed period.

Though in a catena of decisions it has been held by the Courts that the applications to condone the delay shall be considered liberally so as to advance substantial justice to the parties by deciding the matter on merits, the law is equally well-settled that the delay cannot be condoned as a matter of course, and that it is always necessary for the Court to record its satisfaction as to the sufficient cause as required under Section 5 of the Limitation Act for condoning the delay if any. The same principle applies to the appeals under Section 9(3) of Regulation 2 of 1970, and the discretion for condonation of the delay conferred on the appellate authority shall be exercised only where sufficient cause is shown for the delay.

In the case on hand, admittedly the appeal under sub-section (3) of Section 9 was preferred by the Mandal Revenue Officer before the Director of Settlements with a delay of more than 10 years. It was pleaded before the Director of Settlements that the appeal could not be preferred within the period of limitation due to frequent changes of the officials. The Director of Settlements, after hearing both the parties did not accept the said explanation and accordingly while declining to condone the inordinate delay of more than 10 years rejected the appeal as time-barred. Against the said order, a further appeal was preferred before the 1st respondent with a delay of 6 years 3 months stating that though the order was passed by the Director of Settlements on 19-7-1986 the appellant came to know about the same very recently and that the delay in preferring the appeal was only due to administrative delay in communication of the order and obtaining the legal opinion.

The 1st respondent while accepting the said explanation

passed the following order:

> *"The connected records were perused. It is seen from the S.O's file that there is no served copy of the order or acknowledgment from the Tahsildar though a copy is marked. The Mandal Revenue Officer was on oath before Director of Settlements to the effect that the copy was obtained from Dy. Collector (T.W) subsequent to 22-05-1984 when his D.O. Letter No.436/84 dated 16-05-1984 was received. There is no reason to disbelieve this affidavit in the above circumstances. Even then there was a delay of nearly 2 years in filing the Appeal. However, as regards the delay in filing the Appeal before this Court, it is admitted that there is a delay of 6 years attribution to the laches of employees. Since the land involved is in Agency area and the extent involved not small this is a fit case for condonation of delay and direction for disposal on merits by Director of Settlements. Hence, the Appeal is allowed setting aside the impugned order and directing D.O.S. to hear the parties, assess the evidence produced and dispose of the Appeal on merits within 4 months.*
>
> *Appeal allowed as above."*

From the above order, it is clear that the 1st respondent had condoned the delay of 6 years and allowed the appeal merely on the ground that since the land in question is in agency area and a large extent is involved, it is a fit case for disposal on merits. The said reasons assigned by the 1st respondent are apparently extraneous and in my considered opinion do not constitute sufficient cause within the meaning of Section 5 of the Limitation Act, 1963. Hence, on that ground alone the impugned order is liable to be set aside.

It is also relevant to note that by setting aside the order of the Director of Settlements and directing the consideration of matter on merits, the 1st respondent had condoned the delay of more than 10 years in preferring the Appeal before the Director of Settlements against the order of the Settlement Officer dated 22-5-1975. Strangely, the 1st respondent did not apply his mind at all to the issue

whether any sufficient cause was made out for the inordinate delay of more than 10 years in preferring the Appeal before the Director of Settlements much less recorded a finding that the order of the Director of Settlements suffered from any material irregularity in exercise of discretion conferred under Section 5 of the Limitation Act. The 1st respondent has not even expressed his satisfaction as to the existence of sufficient cause, which is a condition precedent for the exercise of discretion under Section 5 of the Limitation Act, 1963. Such a non-speaking order, which does not reflect any valid reason for condoning the abnormal delay of more than ten years, is arbitrary and illegal and liable to be set aside on that ground also.

Accordingly, the impugned order is hereby set aside and the Writ Petition is allowed. No costs.

_____

G. ROHINI, J.

Dt. 20-2-2007

gbs